THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.14088 OF 2002

DATE: 07th September 2006

Between:
Jogineni Viswanatham,
S/o Subbaramaiah, aged 60 years,
Occ: Agriculture, R/o Edarapalli village,
Nandaluru Mandal, Cuddapah District.

… Petitioner.

And

1. The Special Cader Deputy Registrar,
   The district Co-operative Central Bank,
   Cuddapah and another.

… Respondents.

* * *

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring action of the respondents in auctioning the property in survey Nos.1115 and 1113/2 of Nandaluru village, measuring an extent of Ac.1-69 cents, in pursuance of proceedings in E.P.No.883 and 849 of 2001-2002, as arbitrary and illegal and contrary to the provisions of the A.P. Co-operative Societies Act and Rules made thereunder; and consequently to set aside the auction-cum-sale notice.

2. Under the impugned notice the properties of the petitioner, as noticed above, are proposed to be sold in auction on 02.8.2002. It is the case of the petitioner that no notice of any kind was served on him nor he was allowed to participate in any proceedings that had taken up for the purpose of issuing certificate under Section 71 of the A.P. Co-

operative Societies Act (for short 'the Act'). Therefore, the impugned order is liable to be set aside.

3. First respondent filed a detailed counter denying the allegations made by the petitioner. According to the first respondent, the second respondent has filed two applications under Section 71 of the Act before the first respondent in claim No.3223/2000-01 and Claim No.3284/2000-01 for issuance of certificate under Section 71 for Rs.2,703/- and Rs.5,833/-. Pursuant to the said claim, on 06.4.2001, a notice to the petitioner was issued under Section 71 of the Act informing him to appear before the first respondent on 20.4.2001 at 11-00 a.m., but the petitioner failed to attend on the said date. Further, after examination of the loan account of the respondent, a certificate under Section 71 of the Act was issued and the same was also served on the petitioner. Subsequently, the second respondent herein once again requested the petitioner to repay overdue loan amount to the society. It is further asserted that notice No.2 was also served on the petitioner as per Rule 52(3) of the Rules. The Sale Officer-second respondent also followed the procedure for conducting sale as per Rule 52 of the Rules.

4. Apart from the above, while ordering notice before admission in the writ petition an interim stay of the impugned proceedings was ordered on 02.8.2002 subject to the condition, petitioner deposits an amount of Rs.15,530/- (Rupees fifteen thousand five hundred and thirty only) being 1/3rd of the amount within a period of three weeks from that day. It was made clear that on failure to do so, the stay shall be vacated without further reference to the court. However, the said order was extended until further orders by order dated 26-12-2002. Further, on 05.8.2004, the interim order granted on 02.8.2004 and extended on

26.12.2002, was made absolute.

5. Learned counsel for the respondents stated that the petitioner has not complied with the interim order dated 02.8.2004. Thus, as seen from the above, neither the impugned proceedings suffers from any procedural irregularities nor illegalities in view of the assertions made in the counter filed by the first respondent. Further, the petitioner also did not comply with the interim orders under which the petitioner is supposed to deposit an amount of Rs.15,543/-.

6. Viewing from any angle, it does not inspire confidence of the Court to interfere with the impugned proceedings under Article 226 of the Constitution of India. The writ petition is devoid of merit and is liable to be dismissed and accordingly dismissed. However, this will not preclude the petitioner from filing appeal as available under Section 76 of the Act, within a period of four weeks from the date of receipt of a copy of this order and on filing such appeal, the Tribunal shall entertain the same without taking any objection as to limitation. No costs.

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C.V.RAMULU, J.

Date: 07th September 2006.
BSB